IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9105 OF 2005

Mrs.Dilshad Zakirhusen Sheikh Petitioner

versus

Manager, Sahyadri Nagri Co. & Ors. Respondents

Mr.G.S.Godbole and Sangam Sahastrabudhe for petitioner.

Mr.S.K.Chinchalikar, AGP for State.

Mr.R.S.Ghadge with A.S.Desai for respondent no.1

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th January 2006

PC :

1. Heard Shri Godbole appearing for petitioner. He states that respondents 2 and 3 are guarantors and no reliefs are being claimed against them in the writ petition. Service on respondents 2 and 3 is, therefore, dispensed with.

2. As far as respondent no.6 is concerned, Shri Godbole seeks leave to delete respondent no.6 for the purposes of present petition and he states that he shall be impleaded in the pending

revision application, if the same is revived by this Court.

3. Leave granted. Name of respondent no.6 is deleted.

4. Present writ petition challenges an order passed by the Divisional Joint Registrar, Co-operative Societies on 24th November 2005 rejecting petitioner's revision application for non compliance with Section 154(2A) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "MCS Act" for short). Shri Godbole - learned counsel appearing for petitioner-borrower states that the amount under the Recovery Certificate is Rs.1,02,422/- along with interest @ 21% p.a. from 1st October 2003. He submits that by a cheque forwarded on 31st March 2005 in favour of first respondent society a sum of Rs.50,000/- was remitted. This amount together with a further amount of Rs.5,000/- forwarded on 25th April 2005 would constitute 50% of the amount under the Recovery Certificate. Therefore, there is compliance with Section 154(2A) of the MCS Act and the revision application could not have been rejected on that ground.

5. The learned advocate appearing for first respondent as well as Recovery Officer states that the deposit would not constitute 50% amount of the total under Recovery Certificate issued u/s 101 of the MCS Act and the deficit would be Rs.11,600/-. That apart, he submits that in execution of Recovery Certificate, the property belonging to the borrower has been auctioned and the revision in any event would not survive.

6. Considering that the revision application is against Recovery Certificate issued ex-parte and the petitioner agreeing to make good deficit which is a small amount of Rs.11,600/-, interest of justice would be served if consequent upon the petitioner making good the deficit, the revision application before the Divisional Joint Registrar, Co-operative Societies is revived for disposal on merits and in accordance with law. Accordingly following order.

7. ORDER :- A) Petitioner undertakes to pay a sum of Rs.11,600/- (Rs.Eleven thousand six hundred only) within a period of two weeks to first respondent society. Upon such deposit being made and proof of the same being tendered,

the Divisional Joint Registrar, Co-operative Societies shall restore the revision application to his file. He shall thereupon take up the application for condonation of delay and after hearing the petitioner as well as first respondent no.1 society, pass appropriate orders thereon in accordance with law.

B) The deposit made shall be without prejudice to the rights and contentions of petitioner in the revision application and shall abide by such orders as are passed thereon.

C) All contentions are kept open for being raised before the Divisional Joint Registrar. Writ petition is disposed of.

8. Shri Godbole states that the petitioner is in physical possession of the house property, as described in title of this writ petition and till the revision application is heard, petitioner’s possession be protected. He invites my attention to the order of learned Vacation Judge dated 28th December 2005. The status-quo with regard to the possession of petitioner in respect of house property shall be maintained till the Divisional Joint Registrar decides the revision application.

(S.C.DHARMADHIKARI, J.)